No. 16348

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

IRVING I. BASS, Trustee in Bankruptcy of the Estate of Leland Cameron, Bankrupt,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California Central Division

Phillips & Van Orden Co., 4th & Berry, San Francicsa, Calif.—4-3-59

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
United States Attorney;

CHARLES K. RICE,
Asst. U. S. Attorney General;

LEE A. JACKSON,
Attorney, Dept. of Justice,
Washington 25, D. C.;

EDWARD R. McHALE,
Assistant U. S. Attorney;

ROBERT H. WYSHAK,
Assistant U. S. Attorney,
808 Federal Building,
Los Angeles 12, California.

For Appellee:

QUITTNER, STUTMAN & TREISTER,
GEORGE M. TREISTER,
639 So. Spring Street,
Los Angeles 14, California.

In the District Court of the United States
for the Southern District of California
No. 69,054—Y

In the Matter of:

LELAND CAMERON, d/b/a ALLIED AIRCRAFT CO., 5536 Satsuma Ave., No. Hollywood, Calif.

In Bankruptcy, Chapter XI

CLAIM OF UNITED STATES FOR TAXES

State of California,
County of Los Angeles—ss.

R. A. Riddell, District Director of Internal Revenue, Los Angeles, California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says: (1) That the above-named is justly and truly indebted to the United States in the sum of $41,397.21, With Interest and/or Penalties thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

General Prior Tax Claim to 11-14-55

ture of Tax	Period	Tax	Assessed Liability Penalty	Assessed Liability Interest	Accrued Interest	Accrued 5% Penalty
ithholding & ed. Ins. Cont.	2Q55	$17,015.58	None	None	$294.39	$283.60
dditional interest 11-14-55 to 2-14-56					255.23	
Total						$549.62

ıe above tax is claimed as a prior lien. A statutory ın was acquired Aug. 31, 1955. Further interest ll acrue on the above assessed liability, viz; $17,-5.58 at the rate of 6% per annum or 80¢ per day om Feb. 14, 1956, until paid.

Total $17,848.80

General Prior Tax Claim to 11-14-55

Nature of Tax	Period	Tax	Assessed Liability Penalty	Assessed Liability Interest	Accrued Interest	Accrued 5% Penalty
Withholding & Fed. Ins. Cont.	3Q55	$17,811.53	None	None	40.99	None
Withholding & Fed. Ins. Cont.	4Q55	3,506.76	None	None	None	None
Fed. Unemployment	1955	3,063.34	None	None	None	None
		$24,381.63	None	None	40.99	None

Total $24,422.62

Grand Total of Claim as of Feb. 14, 1956 ..... $42,271.42

Detail of Federal Unemployment Tax

Total Taxable Wages	$341,036.24
Tax (3% of Wages)	10,231.09
Less Credit to State	7,167.75
Balance of Tax	3,063.34

(3) That no part of said debt has been paid, but that the same is now due and payable at the office of the District Director of Internal Revenue at Los Angeles, California; (4) That there are no set-offs or counterclaims to said debt; (5) That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens; (6) That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon; (7) That said debt has priority, and must be paid in advance of distributions to creditors, as and to the extent provided in Section 64a (4) of the Bankruptcy Act, or other applicable provisions of law.

Dated this 26th day of January, 1956.

/s/ R. A. RIDDELL,
District Director of Internal Revenue, Los Angeles, California.

Subscribed and sworn to before me this 26th day of January, 1956.

[Seal] /s/ HENRY H. SCHULER,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires April 14, 1958. [2*]

U. S. Treasury Department
Internal Revenue Service
District Director
Los Angeles 12, Calif.

September 18, 1957.

In Replying Refer to: IH:1401:415

Honorable Joseph J. Rifkind,
330 Federal Building,
Los Angeles, California.

In re: Leland Cameron, d/b/a
Allied Aircraft Co.,
5536 Satsuma Avenue,
North Hollywood, Calif.,
Bankruptcy No. 69,054—Y.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

My Dear Mr. Rifkind:

Reference is made to the above-entitled bankruptcy proceeding and to the claim of the United States Government for taxes, dated January 26, 1956, aggregating $42,271.42.

This is to advise that the sum of $3,251.08 has now been credited to the Withholding and Federal Insurance Contribution Tax for the second quarter of 1955, thereby reducing the total of the Prior Lien portion of the above claim from $17,848.80 to $14,597.72, and the grand total of the claim from $42,271.42 to $39,020.34.

It will be appreciated if you will associate this letter with the aforementioned claim.

Very truly yours,

/s/ N. F. LUCERO,
Acting Assistant Chief,
Special Procedures Section.

cc: Irving Bass,
George Triester.

Received September 19, 1957.

[Endorsed]: Filed January 26, 1956. [3]

[Title of District Court and Cause.]

OBJECTIONS TO CLAIMS AND NOTICE OF HEARING OF OBJECTIONS

The undersigned, the duly elected, qualified and acting Trustee in Bankruptcy herein, files his objections to claims which have been filed in these proceedings, and as and for his objections thereto alleges as follows:

Claim No. 139

To: Director of Internal Revenue,
Federal Building,
Los Angeles, California.

The Trustee alleges that said Claim No. 139 was originally filed for $41,397.21, plus interest and penalties. Thereafter, by letter dated September 18, 1957, and attached to claim number 139, the lien portion of the said claim was reduced by $3,251.08. The Trustee alleges that within the lien portion of the said claim is included interest accruing subsequent to bankruptcy in the sum of $255.23.

The Trustee further alleges that claimant is not entitled to post-bankruptcy interest on tax claims, whether or not secured by a lien. Said claim number 139 should be allowed as a lien claim for taxes in the sum of $14,342.49, and as a general priority claim for taxes in the sum of $24,422.62 and disallowed as to the balance thereof.

Wherefore, your Trustee prays that his Objec-

tions be heard herein and appropriate Orders be made in the premises.

/s/ IRVING I. BASS,
Trustee in Bankruptcy.

To the Above Creditors and Their Attorneys:

You Are Hereby Notified that the Trustee in Bankruptcy herein has made and filed herein his written Objections to claims, as hereinbefore set forth, and the same have been set for hearing before the Honorable Joseph J. Rifkind, Referee in Bankruptcy, in the Federal Building, Los Angeles, California, on the 9th day of July, 1958, at the hour of 2:00 o'clock p.m.

Dated: June 4, 1958.

/s/ GEORGE M. TREISTER,
Attorney for Trustee.

[Endorsed]: Filed June 18, 1958. [4]

[Title of District Court and Cause.]

MEMORANDUM OPINION RE OBJECTION TO CLAIM No. 139 OF DIRECTOR OF INTERNAL REVENUE

The validity and amount of the government's tax lien levied prior to bankruptcy is not disputed. The only question involved in the Objection to Claim No.

139, filed by the Director of Internal Revenue, is whether the government is entitled to post bankruptcy interest to the date of payment of such claim as it claims, or only to the date of the filing of the bankruptcy proceedings as contended by the trustee.

It is the opinion of the court that under Palo Alto Mutual Savings & Loan Association v. Williams (9 Cir.), 245 F. (2) 77, interest accrues on a secured claim such as a tax lien to the date of payment. Counsel for the government will prepare, serve and submit an appropriate order.

Dated: July 28, 1958.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed July 28, 1958. [8]

[Title of District Court and Cause.]

STIPULATION OF FACT

It is hereby stipulated that, for the purpose of this matter, the following statements may be accepted as facts:

On August 31, 1955, the District Director of Internal Revenue for the District of Los Angeles assessed Withholding and Federal Insurance Contributions taxes for the second quarter of 1955 in the

sum of $17,015.58 against the bankrupt, Leland Cameron; that notice of the assessment and demand for the payment of said tax was made upon the bankrupt, Leland Cameron, on September 8, 1955, but that no payment was made by him; that the sum of $3,251.08 was credited to this assessment on March 20, 1957, the sum of $13,764.50 was credited to this assessment on July 9, 1958, and the sum of $294.09 was credited on July 9, 1958, to accrued interest on this assessment; that no part of the principal amount of the assessed tax remains due, owing and unpaid to the District Director of Internal Revenue after the credits made on July 9, 1958, but [5] that accrued interest in the sum of $2,453.64, representing the balance of interest which accrued from the date of assement until the date of payment, remains due, owing and unpaid to the District Director of Internal Revenue.

Dated: This 7th day of August, 1958.

QUITTNER, STUTMAN & TREISTER,

By /s/ GEORGE M. TREISTER,
Counsel for the Trustee in Bankruptcy.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant U. S. Attorney,
Chief, Tax Division;

JACK ROBERTS,
Attorney, Internal Revenue Service;

By /s/ JACK ROBERTS,
Counsel for District Director of Internal Revenue.

[Endorsed]: Filed August 8, 1958. [6]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON TRUSTEE'S OBJECTION TO CLAIM OF DISTRICT DIRECTOR OF INTERNAL REVENUE

At Los Angeles, in Said District, on the 8th Day of August, 1958.

The objection of the Trustee in Bankruptcy to Claim No. 139 of the District Director of Internal Revenue having come on for hearing on the 9th day of July, 1958, before the undersigned Referee in Bankruptcy, of which hearing due notice was given to Respondent, at which hearing the Trustee was represented by George M. Treister of Quittner, Stutman and Treister and the District Director of Internal Revenue was represented by Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, and Jack E. Roberts, Attorney, Internal Revenue Service; and the Court being duly advised now makes the following: [10]

Findings of Fact

I.

That on August 31, 1955, the District Director of Internal Revenue for the District of Los Angeles assessed Withholding and Federal Insurance Contributions taxes for the second quarter of 1955 in the sum of $17,015.58 against the bankrupt, Leland Cameron; that notice of the assessment and demand for the payment of said tax was made upon the bankrupt, Leland Cameron, on September 8, 1955, but that no payment was made by him; that the sum of $3,251.08 was credited to this assessment on March 20, 1957, the sum of $13,764.50 was credited to this assessment on July 9, 1958, and the sum of $294.09 was credited on July 9, 1958, to accrued interest on this assessment; that no part of the principal amount of the assessed tax remains due, owing and unpaid to the District Director of Internal Revenue after the credits made on July 9, 1958, but that accrued interest in the sum of $2,453.64, representing interest which accrued from the date of the petition herein until the date of payment, remains due, owing and unpaid to the District Director of Internal Revenue.

II.

That on November 14, 1955, the petition was filed with the Court which instituted these proceedings.

From the foregoing findings of fact the Court draws the following:

Conclusions of Law

I.

That a lien in favor of the United States in the amount of $17,015.58 arose at the time the assessment was made on August 31, 1955, [11] and became a lien upon all property and rights to property, whether real or personal, belonging to the bankrupt, Leland Cameron.

II.

That said lien is valid against the Trustee in Bankruptcy.

III.

That interest accrues to the date of payment on a secured claim such as a tax lien and should be allowed as part of the lien claim of the District Director of Internal Revenue.

Order

In accordance with the foregoing Findings of Fact and Conclusion of Law it is hereby ordered, adjudged and decreed:

That the claim of the District Director of Internal Revenue for interest on the taxes which were assessed and became liens prior to the date on which the bankrupt filed his petition with this Court be allowed and that the amount of $2,453.64, remaining due, owing and unpaid, be paid by the Trustee in Bankruptcy to the District Director of Internal Revenue.

Dated: This 8th day of August, 1958.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

Approved as to form:

QUITTNER, STUTMAN & TREISTER,

By /s/ GEORGE M. TREISTER,
Counsel for Trustee in Bankruptcy.

Received August 8, 1958.

[Endorsed]: Filed August 8, 1958. [12]

[Title of District Court and Cause.]

PETITION TO REVIEW ORDER OF REFEREE RE OBJECTIONS TO CLAIM NUMBER 139

To: Honorable Joseph J. Rifkind, Referee in Bankruptcy:

The petition of Irving I. Bass respectfully represents and shows:

I.

Your petitioner is the duly elected, qualified and acting Trustee in Bankruptcy of the above-entitled matter.

II.

Your petitioner is aggrieved by the order of the Honorable Joseph J. Rifkind, Referee in Bankruptcy, entered August 8, 1958, overruling your

petitioner's objections to a portion of claim number 139, Director of Internal Revenue claimant.

III.

The Referee erred in said order overruling your petitioner's objections to the said claim and allowing interest on the lien portion of the said claim to the date of payment thereof. Your petitioner contends that interest on tax lien [13] claims, as in the case of tax claims not secured by liens, ceases to accrue at the date of bankruptcy, to wit, November 15, 1955.

Wherefore, your petitioner prays that said order be reviewed by a Judge in accordance with the provisions of the Bankruptcy Act, that said order should be reversed and the said claim of the Director of Internal Revenue allowed with interest only to the date of bankruptcy but not thereafter, and that your petitioner have such other and further relief as is just.

Dated: August 13, 1958.

/s/ IRVING I. BASS,
Trustee in Bankruptcy.

QUITTNER, STUTMAN & TREISTER,

By /s/ GEORGE M. TREISTER,
Attorneys for Trustee.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 15, 1958. [14]

[Title of District Court and Cause.]

CERTIFICATE ON REVIEW FROM REFEREE'S ORDER DATED AUGUST 8, 1958

To: Hon. Leon R. Yankwich, Chief United States District Judge.

The undersigned, Joseph J. Rifkind, a Referee in Bankruptcy of the above-entitled court, does hereby certify as follows:

Statement of Case

The referee made an order on August 8, 1958, holding that the Director of Internal Revenue was entitled to post-bankruptcy interest on the government's tax lien to the date of payment. The trustee in bankruptcy contends that the government is only entitled to interest on the tax lien to the date that the bankruptcy proceedings were instituted. The trustee in bankruptcy feeling aggrieved by the order of the referee has filed a petition for review.

Summary of the Evidence

The objection of the trustee in bankruptcy to the claim of the Director of Internal Revenue was heard on the following stipulated facts, to wit:

"On August 31, 1955, the District Director of Internal Revenue for the District of Los Angeles assessed Withholding and Federal Insurance Con-

tributions taxes for the second quarter of 1955 in the sum of $17,015.58 against the bankrupt, [17] Leland Cameron; that notice of the assessment and demand for the payment of said tax was made upon the bankrupt, Leland Cameron, on September 8, 1955, but that no payment was made by him; that the sum of $3,251.08 was credited to this assessment on March 20, 1957, the sum of $13,764.50 was credited to this assessment on July 9, 1958, and the sum of $294.09 was credited on July 9, 1958, to accrued interest on this assessment; that no part of the principal amount of the assessed tax remains due, owing and unpaid to the District Director of Internal Revenue after the credits made on July 9, 1958, but that accrued interest in the sum of $2,453.64, representing the balance of interest which accrued from the date of assessment until the date of payment, remains due, owing and unpaid to the District Director of Internal Revenue."

The involuntary bankruptcy proceedings herein were filed on November 15, 1955, and the debtor was adjudicated a bankrupt on March 12, 1956.

Questions Presented on Review

The only question presented on review is whether or not interest on the government's tax lien ceases to accrue after the date of the institution of the bankruptcy proceedings or whether the government is entitled to accrued interest on its tax lien to the date of payment of the claim.

Documents Transmitted With Certificate

The following documents are transmitted herewith, to wit:

1. Claim No. 139 filed by District Director of Internal Revenue on January 26, 1956, for $41,-397.21, with [18] letter attached thereto from the U. S. Treasury Department dated September 18, 1957;

2. Objection to Claim and Notice of Hearing of Objections filed June 18, 1958;

3. Stipulation of Facts filed August 8, 1958, by counsel for District Director of Internal Revenue;

4. Letter dated July 14, 1958, from George M. Treister, attorney for trustee, to the referee in bankruptcy, citing authorities;

5. Memorandum Opinion re Objection to Claim No. 139 of Director of Internal Revenue filed July 28, 1958, and Certificate of Mailing thereof;

6. Findings of Fact, Conclusions of Law and Order on Trustee's Objection to Claim of District Director of Internal Revenue, dated August 8, 1958;

7. Petition to Review Order of Referee re Objections to Claim No. 139, filed by trustee in bankruptcy on August 15, 1958;

Dated: August 20, 1958.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy.

[Endorsed]: Filed August 20, 1958. [19]

[Title of District Court and Cause.]

OPINION

Yankwich, Chief Judge:

On November 14, 1955, a petition in involuntary bankruptcy was filed against Leland Cameron, also known as L. H. Cameron, doing business as Allied Aircraft Company.* On March 8, 1956, the debtor withdrew his Answer to the petition and consented to an Order of Adjudication.[2] On August 31, 1955, the District Director of Internal Revenue for the District of Los Angeles assessed withholding and federal insurance contribution taxes against the debtor for the second quarter of 1955 in the sum of $17,015.58. Notice of the assessment, with demand for the payment, was made on September 8, 1955. No payment was made at the time. On March 20, 1957, the sum of $3,251.08 was credited to this assessment; on July 9, 1958, the sum of $13,764.50 was credited, and, finally, the sum of $294.09 was credited on July 9, 1958, to accrued interest on the assessment.

---

*[Notes to text are set out following this Opinion.]

The principal of the assessment has been paid, but on July 9, 1958, accrued interest in the sum of $2,453.64, representing interest which accrued from the date on which the petition was filed until the date of payment remained unpaid. A lien for the assessment was perfected before filing of the petition.[3]

The District Director presented a claim for the entire sum which was known as Claim No. 139. The Trustee objected to the portion relating to the assessment of interest after the date of the filing of the petition. After hearing, on notice, the Referee made an Order dated August 8, 1958, overruling the objection of the Trustee, and allowing post-bankruptcy in interest on [22] the claim, to constitute a lien on the assets of the bankrupt. The Referee made findings embodying the facts we have summarized, which were stipulated. In a memorandum preceding the findings, the Referee expressed the view that a recent decision of the Court of Appeals for the Ninth Circuit,[4] which held that a secured creditor was entitled to interest to the date of payment, whenever the proceeds of the sale of the encumbered property are sufficient to pay not only the principal, but the post-bankruptcy interest as well, applied. He, therefore, upheld the contention of the Government, reasserted here, that the lien for taxes,[5] when perfected,[6] is of the same character as a security, so as to entitle the Government to interest to the date of payment.

I.

Interest on Claims in Bankruptcy

The determination of the matter calls for a brief examination of the problem of interest on claims in bankruptcy. Section 62(b) of the Bankruptcy Act of 1938, which, in one form or another, has existed since the enactment of the first Bankruptcy Act, provides:

> "Debts of the bankrupt may be proved upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable or not, with any interest thereon which would have been recoverable [23] at that date or with a rebate of interest upon such as were not then payable and did not bear interest;[7]

One of the great innovations of the 1938 Act was to put claims of the United States and the States in the same class with others so far as proving and filing are concerned, with the exception that the Government of a State or subdivision may obtain an extension of time.[8] The object of the section, as interpreted by writers, so far as interest is concerned, has been summed up in this manner:

> "A governmental or public claim can include interest in like manner and to the same extent as

> any other claim, but to no greater extent. It cannot include interest accuring after the filing of the bankruptcy or reorganization petition, even though it has been reduced to lien form."[9]

The Congress, in placing federal and state taxing bodies and other creditors on the same footing as to interest, gave effect to traditional doctrine which, for over a century and a half, in England and in the United States, disallowed interest in bankruptcy. The reason was stated by Mr. Justice Holmes in a leading case:

> "For more than a century and a half the theory of the English bankrupt system has been that everything stops at a certain date. Interest was not computed beyond the date of the commission. * * * The rule is not unreasonable when closely considered. It simply [24] fixes the moment when the affairs of the bankrupt are supposed to be wound up."[10]

There has been no break in the continuity of this approach.[11] Significantly, in the last case,[12] the Court says as to Government tax claims:

> "Tax claims are treated the same as other debts except for the fourth priority of payment, § 54(a), 11 U.S.C. § 104(a), and the provision making taxes nondischargeable, § 17, 11 U.S.C. § 35. But each of these sections is silent as to interest.

> "The long-standing rule against post-bankruptcy interest thus appears implicit in our current Bankruptcy Act."[13]

In the case in which this statement was made, the Court held that the City of New York could not claim interest on taxes beyond the date of bankruptcy. As the Bankruptcy Act of 1938 makes no distinction between State and federal taxes grouping them as claims,[14] the Court of Appeals which have had occasion to apply this decision, have held that tax claims by the Government of the United States are in the same category and draw no interest beyond the date of bankruptcy.[15]

The Supreme Court, in denying certiorari in two of these cases, specifically referred to its ruling in the Saper case.[16] It is noteworthy also that in each of these cases, the Government attempted, as it does in this case, to limit the Saper case ruling to the specific situation in the case.[17] However, the Courts declined to do so and held that, by analogy, the principle applied [25] not only to bankruptcy, but to receiverships and reorganization proceedings. The Court of Appeals for the Second Circuit in the case just cited, speaking through Chief Judge Clark, said very emphatically:

> "The question of the accruing of interest and tax penalties during bankruptcy had divided the courts, including different panels of our own court, until the case of City of New York vs. Saper, 336 U. S. 328, 69 S. Ct. 554, 93 L. Ed. 710, and other companion cases settled that such

claims whether federal or state, were not collectible in bankruptcy including reorganization and arrangement proceedings. Thereafter we construed the meaning and intent of this principle to be that such claims could not thereafter be used to harass a reorganized corporation as it attempted anew to face the vicissitudes of business life. It is true that Sword Line vs. Industrial Commissioner of State of New York, 2 Cir., 212 F. 2d 865, certiorari denied 348 U. S. 830, 75 S. Ct. 53, 99 L. Ed. 654, specifically concerned a state claim; but the entire reasoning, based upon the Saper principle, was as completely applicable to federal as to state claims. See 30 N. Y. U. L. Rev. 716, n. 2, 718, n. 17. In our view interest and penalties did not accrue after the bankruptcy. Whether this or a rationale that they accrued but were barred, see 54 Col. L. Rev. 1293; 30 N. Y. U. L. Rev. 558, 580-584, is the more appropriate, the result [26] is the same. They are nonexistent; and the proceedings for their collection are at best futile, at worst inimical to the future welfare of the newly reorganized corporation. In the Sword Line case there was an extensive and persuasive dissent advancing all the arguments which it seems the appellee here can eventually propound; but the denial of certiorari, 348 U. S. 830, 75 S. Ct. 53, 99 L. Ed. 654, terminated that claim and permitted our injunction against the state proceedings for collection to stand."[18]

In another of these cases, the logic of the application of the doctrine which denies interest after bankruptcy was defended in this manner:

> "We think that no implication reasonably can be drawn from the Saper case that tax claims have any different status in an arrangement proceeding under Chapter XI than they have in ordinary bankruptcies. The Supreme Court said in the Saper case, pages 337-338, of 336 U.S., page 559 of 69 S. Ct.; 'The Court of Appeals concluded that by the 1926 amendment and the Chandler Act, Congress assimilated taxes to other debts for all purposes, including denial of postbankruptcy interest. We think this is a sound and logical interpretation of the Act after those amendments to §§ 64, sub. a, and 57, sub. n. Considered in conjunction with the general rule against postbankruptcy interest as well as § 63's limitations of interest [27] on other claims to date of bankruptcy, they compel our conclusion, already stated, that the statute as amended did not contemplate any exception in favor of tax claims.'
>
> "It seems apparent that if the amended sections referred to by the Supreme Court, namely 64, sub. 2, 57, sub. n. and 63, are applicable to arrangement proceedings under Chapter XI, there can be no logical basis for a ruling that in such a proceeding a tax claim bears interest beyond the date when the debtor's petition is filed."[19] (Emphasis added.)

These decisions correctly interpret the nature of the Government tax liens against the historical background of the denial of post-bankruptcy interest. The tax lien of the Government attaches to

> "all property and rights to property whether real or personal,"

belonging to the taxpayer.[20] It continues

> "until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time."[21]

It is insisted that a distinction should be made between ordinary taxes and taxes which have been transmuted into a lien. It is argued that the tax lien created by these sections is a specific lien, so that the same rule as to interest should apply as the Court of Appeals for the Ninth Circuit applied in the Palo Alto case which the Referee followed.[22] [28]

The cases which have used the word "specific" in designating the lien were cases involving claimed priorities between tax liens of the Government and liens of local taxing agencies. To overcome the contention that the liens of the Government were "floating," the Courts said that the liens were specific in the sense that as of the date of the filing of proper notice, they attach to all the property owned by the taxpayer. One of the cases relied on at the argument shows clearly that the word "specific" was used merely to indicate that the

lien, although it attached to more than one parcel of property, is specific enough to have priority over other liens. The language used is this:

> "To say that the lien provided by this statute is a general lien on all the property of the taxpayer does not help in the solution of the problem presented; for a lien is not deprived of validity because it attaches to a number of pieces of property instead of to a single piece, nor is it for that reason to be subordinated to a junior lien attaching to a single piece of property. When properly perfected, the lien under the statute constitutes a charge upon specific property of the taxpayer for the satisfaction of which that property may be sold under proceedings instituted for the purpose As said in Metropolitan Life Ins. Co. vs. United States, 6 Cir., 107 F. 2d 311, 313, 'The Federal statutes create specific liens for taxes and as a corollary give a specific remedy for their removal and when such liens [29] once attach, they may be lifted only as provided thereunder.'"[23] (Emphasis added.)

These decisions merely give effect to the established doctrine that a Government tax lien made specific by notice, has priority over any other liens.[24] They do not teach that it is a specific encumbrance on a specific piece of property in the sense in which a mortgage or deed of trust is.

II.

No Interest on Taxes, Liened or Not

The determination of the matter before us must be made against the background we have just outlined, that, as a rule, the disallowance of interest is, and has been, traditionally the rule in bankruptcy. The exceptions to the rule are few. Interest will be allowed in bankruptcy or liquidation if (a) by reason of a change of affairs the estate can pay out the creditors in full and there is money left to pay interest;[25] (b) when income is produced from a security given by the bankrupt to the creditor, as interest on bonds, dividends on stock or rentals on mortgaged property.[26]

The Court of Appeals for the Ninth Circuit and others have added a new category, the instance where

> "the estate is insolvent but the proceeds of the sale of the mortgaged properties are sufficient to pay post-bankruptcy interest to the secured creditor."[27] [30]

The situation thus contemplated was intended to protect the creditor in his security which, on liquidation, produced enough to satisfy the encumbrance. And herein lies the real distinction between the situation which the Court had before it in that case and a tax lien.

An encumbrance is placed upon the property voluntarily by a debtor as security for his debt after

agreement with the creditor. By doing so, the debtor authorizes not only the satisfaction of the debt out of the sale of the particular property, but agrees to the payment of any deficiency that might arise after the sale and that other property he may own may be subjected by execution to the payment of a deficiency judgment.[28]

In whatever legal proceeding the secured creditor takes to satisfy his debt, the debtor cannot, except in cases involving fraud, question the validity of the instrument or the amount of the debt which it was given to secure. Prima facie, at least, the presumption is that it was voluntarily given for a debt actually owed. At most, the question might arise about any deductions for payments made. So the instrument itself settles most of the problems as to genuineness, due execution and the amount of the debt. This is not so in the case of a tax lien. The tax lien is merely an assertion by the Government that so much tax remains unpaid. The filing of the lien does not determine the tax as against the taxpayer. And, in any subsequent proceedings, whether brought by the Government to foreclose the lien or by the taxpayer [31] who pays the assessment and sues for a refund or enjoins the Government after liquidation or seizure, or by the Government of the United States when it institutes the action to collect, the validity of the entire assessment and its exact amount are justiciable questions.[29] Rightly. For otherwise, the taxpayer would be at the mercy

of the humblest agent of the revenue service who capriciously levied an assessment. From long judicial experience, I know of assessments running into hundreds of thousands of dollars, which, after judicial inquiry, were found to have no foundation except a misinterpretation of the law by the officer levying the assessment concurred in by the Commissioner. So there are many cogent reasons for allowing post-bankruptcy interest in a case where a specific piece of property is impressed by the debtor with a mortgage or trust deed and appropriated, after mutual agreement between him and his creditor, to the payment of a specific debt, when, upon liquidation, a surplus exists. But there is no justification for a distinction between ordinary taxes and taxes which are made the subject of a lien, which comes into being unilaterally and may be disputed as to validity and amount by the taxpayer in administrative and judicial proceedings, warranting the court to depart from the salutary principle of disallowing interest in bankruptcy, except in certain extraordinary instances.

Collier sums up very graphically the reason for assimilating the tax claim with all other claims, so far as interest is concerned:

> "It seems, however, that the Act of 1938 should offer sufficient justification for assimilating the treatment of tax claims to that of other claims. That former § 64a [32] singling out tax claims as claims sui generis has not been

deleted may perhaps in itself not warrant the abandonment of a practice that was not deviated from when the 'superpriority' granted by the Act of 1898 was transformed into a sixth priority. But the Act of 1938 went one step further. It deprived tax claims of their former immunity from destruction through failure to observe the statutory period of proof as provided in § 57n. Tax claims are now to be proved in the manner and time prescribed for other claims. Unless it is felt that their continued exception from dischargeability has any bearing on the question, this deliberate and fundamental change in conjunction with the elimination of former §64a would seem clearly to indicate that Congress is inclined to liken tax claims to other claims and subject them to the same rules. As to interest, this would entail the stopping of interest from the date of bankruptcy to the extent and with the qualifications discussed previously."[30]

III.

Comment on Some Decisions

Several district courts which have had before them the problem of interest on federal taxes reduced to liens have declined to see any distinction between them and any other taxes and have declined to allow post-bankrupt interest on them. As their reasoning accords with my own views, and with the general principles [33] already outlined,

brief quotations from some of them will be given with appropriate comment.

In a case arising in the District Court of Kansas, the Referee in bankruptcy, whose views were later adopted by the Court, wrote:

> "A statutory lien comes into existence at the instance of the lienor who sets in motion the statutory authority. The lien is dependent for its existence on a valid debt or obligation. The debt may survive the lien, but the lien cannot survive the debt. If the debt fails or ceases to exist, the lien is nugatory. The lien does not establish the amount of the debt. It cannot make an indebtedness legal that otherwise would be illegal.
>
> "The sole purpose of a penalty is to punish for a delinquency. This is especially true under the tax laws. The imposing of a penalty on a bankrupt estate is not a punishment of the delinquent but of the creditor—the innocent bystanders. It is contrary to every principle of American law that one person should be punished for the delinquency of another.
>
> "If Section 57, sub. j of the bankruptcy act is set aside by the establishment of a lien, then the estate may be wiped out, not by debts but by penalties. If Section 57, sub. j is not enforceable against tax liens, what is to be done with Section 67, sb. c? [34] The first makes a penalty disallowable, the second postpones

the lien. If the first statute is nullified by an established lien, why is not the second?

"It is my conclusion that the United States is not entitled to recover penalties, although they may be a part of an established lien."[31] (Emphasis added.)

In another case, Chief Judge Wallace S. Gourley of the Western District of Pennsylvania, sums of the principle against allowance of post-bankruptcy interest and applies it to tax claims reduced to liens in this manner:

"As a matter of public policy the courts have recognized that as a general rule, after property of an insolvent passes into the hands of a receiver, interest is not allowed against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate. Thomas v. Western Car Co., 149 U. S. 95, 13 S. Ct. 824, 37 L. Ed. 663; Vanston Bondholders Protective Committee v. Green, 329 U. S. 156, 67 S. Ct. 237, 91 L. Ed. 162.

"The government has concurred in the view that tax claims against a bankrupt bear interest only until the date of bankruptcy, but seeks to distinguish between those tax claims reduced to liens and tax claims not reduced to liens, advancing the argument that the general rule of interest herein enunciated has application only to tax claims not reduced to liens. [35]

> "I find no basis in law or policy for this arbitrary distinction. A meticulous examination of the authorities reveals no such tortured classification."[32] (Emphasis added.)

More recently, the same Pennsylvania District Court applied these principles to penalties.[33] And a Texas District Court has concurred in this view.[34]

Summary and Conclusion

The general rule against allowance of interest on all claims in bankruptcy, including tax claims, after the filing of the petition, has sound historical considerations dating back to more than a century and a half in English and American practice, as the preceding discussion shows. It is grounded on the principle that

> "* * * delay in distribution is the act of the law; it is necessary incident to the settlement of the estate."[35]

"Equality of distribution" between creditors equally situated is the aim of the bankruptcy law.[36] A differentiation between simple taxes and liened taxes is not warranted by the present bankruptcy statute which, with few exceptions, places all claims on an equal basis as to interest and rejects penalties, except where actual pecuniary loss has been sustained.[37]

As stated in the New York case already referred to:

> "The underlying claim upon which the tax lien is predicated in the case at bar is expressly barred by Section 57, sub. j for the protection of other creditors whose interest would be adversely affected by the withdrawal of assets from the bankrupt estate. The fact that the penalties are covered by a lien does not alter the conclusion that such penalties are not allowable in this proceeding."[38] (Emphasis added.)

A contrary view would result in the anomaly of the Government being, in many cases, the sole creditor who not only is paid its debt in full, but receives post-bankruptcy interest, while other creditors, to whom the major part of the debts is owed, receive little or nothing. In the case of the ordinary business firm, the lienable tax claims, such as withholding taxes and the like, which are paid periodically, would constitute a small amount of the debts owed.[39]

Because the Government's lien attaches to all the debtor's property, a situation might arise where the sale of all the debtor's property might not bring more than the amount of the Government's tax lien, swollen by interest. This would mean that the Government would become the preferred creditor, not by reason of any statutory command, but by reason of a judicial interpretation which, disregarding historical and equitable considerations, would allow the Government to augment its debt by adding interest to the time of payment. Absent an ex-

plicit Congressional direction, we should avoid, in bankruptcy, a construction which would make such inequality possible. The Government is given a preferred position as to its tax claims by statute.[40] We should not better it by extending it to interest by judicial fiat.[41] [37]

The Order of the Referee dated August 8, 1958, allowing interest after the filing of the petition in the sum of $24,563.64, is reversed and the said interest is ordered disallowed.

Formal Order to follow to be prepared by counsel for the Trustee.

Dated: October 1, 1958.

/s/ LEON R. YANKWICH,
Chief Judge. [38]

Notes to Text

[1]Bankruptcy Act of 1938, § 3; 11 U.S.C.A., § 21.

[2]Bankruptcy Act of 1938, § 3(6); 11 U.S.C.A., § 21(6).

[3]Internal Revenue Code of 1954, § 6323.

[4]Palo Alto Mutual Savings & Loan Association v. Williams, 9 Cir., 1957, 245 F. 2d 77.

[5]Internal Revenue Code of 1954, § 6321.

[6]Internal Revenue Code of 1954, § 6323.

[7]Bankruptcy Act of 1938, § 63(a); 11 U.S.C.A., § 103(a). For a resume of the legislative changes, see, Collier on Bankruptcy, 14th Ed., 1956, Vol. 3, §§ 63.01-63.02, pp. 1755-1762.

[8]Bankruptcy Act of 1838, § 57(n); 11 U.S.C.A.,

§ 93(n); Collier on Bankruptcy, 14th Ed., Vol. 3, § 6326, pp. 1869-1870.

[9]2 Remington on Bankruptcy, 1956, pp. 224-225.

[10]Sexton v. Dreyfus, 1911, 219 U.S. 339, 344.

[11]American Iron Company v. Seaboard Airlines, 1913, 233 U.S. 261, 266-267; Vanston Committee v. Green, 1946, 329 U.S. 156, 163-165; In re Inland Gas Corp., 6 Cir., 1957, 241 F. 2d 374, 379.

[12]New York v. Saper, 1949, 336 U.S. 328, 330-332.

[13]New York v. Saper, supra Note 12, p. 332.

[14]Bankruptcy Act of 1938, § 57(n).

[15]United States v. General Engineering & Mfg. Co., 8 Cir., 1951, 188 F. 2d 80; United States v. Edens, 4 Cir., 1951, 189 F. 2d 876; National Foundry Co. of New York v. Director of Internal Revenue, 2 Cir., 1956, 229 F. 2d 149. And see, Vanston [39] Committee v. Green, 1946, 329 U.S. 156, 163-165.

[16]United States v. Edens, 1952, 342 U.S. 912; United States v. General Engineering & Mfg. Co., 1952, 342 U.S. 912.

[17]See cases cited in Note 15.

[18]National Foundry Company v. Director of Internal Revenue, supra Note 12, p. 150.

[19]United States v. General Engineering & Mfg. Co., supra Note 15, pp. 81-82.

[20]Internal Revenue Code of 1954, § 6321.

[21]Internal Revenue Code of 1954, § 6322.

[22]Palo Alto Mutual Savings & Loan Assn. v. Williams, supra Note 4.

[23]United States v. City of Greenville, 4 Cir., 1941, 118 F. 2d 963, 965. Similar language is used in United States v. Reese, 7 Cir., 1942, 131 F. 2d 466, 470, where the Court states that

> "* * * the government's lien, made specific by being of record, takes priority over an existing

inchoate lien not liquidated or fixed in amount until after the government's lien attached." (Emphasis added.)

[24]New York v. Maclay, 1933, 288 U.S. 290; Michigan v. United States, 1943, 317 U.S. 338; Cobb v. United States, 1949, U.S. App. D.C., 172 F. 2d 277.

[25]See, Ticonic National Bank v. Sprague, 1938, 303 U.S. 406, 410-411; Fujikawa v. Sunrise Soda Water Works Co., 9 Cir., 1946, 158 F. 2d 490, 494; Campbell v. Littleton, 4 Cir., 1950, 179 F. 2d 848, 852-853; Note, 27 A.L.R. 2d 586. See the writer's opinion in re F. P. Newport Corp., 1954, D.C. Cal., 123 F. Supp. 95, 99.

[26]Palo Alto Mutual Savings & Loan Assn. v. Williams, supra Note 4, p. 79. These exceptions have received general recognition. See, Collier on Bankruptcy, 14th Ed., Vol. 3, § 63.16, pp. 1839-1844.

[27]Palo Alto Mutual Savings & Loan Assn. v. Williams, supra Note 4, p. 78. See, In re Macomb Trailer Coach, 6 Cir., 1952, 200 F. 2d 611, In re Inland Gas Corp., 6 Cir., 1957, 241 F. 2d 374, 379-380.

[28]California Civil Code, §§ 2947-2953; California Code of Civil Procedure, § 725(a)-730. See also, California Code of Civil Procedure, § 580(a) (deficiency judgment). Judge Richard H. Levet of the Southern District of New York, in a case in which the Government sought both penalties and interest on taxes which had been liened, summed up the differences between a voluntary bi-lateral security on property which, when liquidated, produces enough to satisfy principal and interest, and the type of unilateral lien perfected pursuant to the Internal Revenue Code "upon all property and rights to property whether real or personal," of the taxpayer. (Internal Revenue Code of 1954, §6321) in this manner: [41]

"A general lien of this type is distinguishable from the specific security involved in those cases where the courts have seen fit to recog-

nize the existence of an exception to the general rule that interest ceases to run on secured and unsecured claims as of the date of the filing of the petition in bankruptcy. The distinction lies in the fact that the specific security involved in the cases where an exception was found was usually the result of a voluntary transaction between the debtor and the creditor and the payment of interest was contemplated by the parties. This Court, therefore, is reluctant to extend the application of the third exception to allow interest on a tax lien to the date of payment where the security consists of a general lien 'upon all property and rights to property, whether real or personal' belonging to the bankrupt." (In re Lykens Hosiery Mills, D.C. S.D. N.Y, 1956, 141 F. Supp. 895, 897-898.)

[29]See, Internal Revenue Code of 1954, §§ 6211-6216 (relating to deficiency procedure); §§ 6301-6303 (relating to the collection of taxes); §§ 6331-6337 (relating to seizure and sales of property); §§ 7401-7407 (relating to civil actions by the United States); §§ 7421-7425 (relating to proceedings by the taxpayer).

[30]Collier on Bankruptcy, loc. cit., p. 1843.

[31]In re Burch, Ref., D.C. Kans., 1948, 89 F. Supp. 249, 254. The [42] ruling of the Referee disallowed the penalty, but allowed interest. This view was followed by Chief Judge Arthur J. Mallott of the District of Kansas in In re Haynes, D.C. Kans., 1949, 88 F. Supp. 379, 383.

In our view, the imposition of post-bankruptcy interest is a penalty. As stated by Judge John Bright in In re Union Fabrics, D.C. N.Y., 1947, 73 N.Y. Supp. 685, 688:

"The allowance of interest to the date of payment, an accumulation caused solely because of delays necessitated by the successful efforts of the Trustee to protect and increase

the estate, seems to me to be entirely inequitable and to result in an unbalance of equities between the several creditors rather than a 'balance of equities' which the Supreme Court says is the touchstone of each decision. It would do more. As I have written above, it would require the general creditors to pay the penalty caused by the delay necessitated to preserve and protect the estate." (Emphasis added.)

[32]In re Industrial Machine & Supply Co., W.D. Pa., 1953, 112 F. Supp. 261, 263. A similar ruling was made in the Southern District of New York in In re Lykens Hosiery Mills, discussed supra Note 28. [43]

[33]In re Hankey Baking Co., 1954, W.D. Pa., 125 F. Supp. 673.

[34]In re C. J. Dick Towing Co., 1958, D.C. Texas, 161 F. Supp. 751.

[35]Thomas v. Western Car Co., 1893, 149 U.S. 95, 117. See, Tredegar Co. v. Seaboard Air Line Ry., 4 Cir., 1910, 183 F. 2d 289, 290. See, American Iron & Steel Mfg. Co. v. Seaboard Air Line Ry., 1914, 233 U.S. 261, 266, where the Court said:

> "As this delay was the act of the law, no one should thereby gain an advantage or suffer a loss."

[36]Samsell v. Imperial Paper Corp., 1941, 313 U.S. 215, 219; American Iron & Steel Mfg. Co. v. Seaboard Air Line Ry., supra Note 35, p. 266.

[37]Bankruptcy Act of 1938, & 57(j); 11 U.S.C.A., & 93(j). And see, Bankruptcy Act of 1938, § 67(b); 11 U.S.C.A. & 107(b).

[38]In re Lykens Hosiery Mills, supra Note 28, p. 899. See, Gardner v. New Jersey, 1947, 329 U.S. 565, 579-581 and Sword Line, Inc. v. Industrial Commissioner of State of New York, 1954, 212 F.

2d 865, 868-870, which recognize the traditional control of the bankruptcy court over interest not originating in contract and the right to deny it, if inequitable to other creditors.

[39]The condition of affairs in this case illustrates the point made here. The debtor listed as taxes due the United States, $38,853.13. The claim actually filed by the Government for all taxes was $41,-397.21. The lienable claim finally asserted and allowed by the Court was $17,015.58. The [44] total debts scheduled, including taxes, were $373,981.07. As of today, the Referee's records show claims allowed in the sum of $400,926.62. The value of the assets realized by the Trustee, as shown by his interim report of August 1, 1958, is $143,003.59. While the preferred claims have been paid, no dividend has been paid on the general claims.

[40]The Government's tax lien is good, even if the taxes were incurred while the debtor was insolvent. (Bankruptcy Act of 1938, § 67(b); 11 U.S.C.A., § 107(b)). And, while the taxes were subordinated to claims for (1) costs of administration, (2) wage claims and (3) costs of certain contests in reorganization (Bankruptcy Act of 1938 §§ 64(a), 67(c); 11 U.S.C.A. § 104(a), 107(c)), they are not affected by discharge (Bankruptcy Act of 1938, § 17(a)(1), 11 U.S.C.A., § 35(a)(1)).

[41]The idea that the allowance of postbankruptcy interest goes counter to the principle of "equality" was aptly expressed by the Supreme Court in Bank vs. Sprague, supra Note 25, p. 411:

> "It is in order to asure equality among creditors as of the date of insolvency that interest accruing thereafter is not considered."

And Mr. Justice Douglas has summed up the theory of "equality" in bankruptcy in a noted apothegm:

> "But the theme of the Bankruptcy Act is equality of distribution." (Sampsell vs. Imperial Paper Co., 1941, supra Note 36, p. 219).

[Endorsed]: Filed October 1, 1958. [45]

In the District Court of the United States, Southern District of California, Central Division

No. 69054-Y

In the Matter of

LELAND CAMERON, aka L. H. CAMERON, dba ALLIED AIRCRAFT CO.,

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PETITION TO REVIEW REFEREE'S ORDER OF AUGUST 8, 1958, RE CLAIM No. 139

At Los Angeles, in Said District, on the 13th Day of October, 1958.

This matter came on to be heard before the undersigned United States District Judge on September 15, 1958, upon the petition of Irving I. Bass, Trustee in Bankruptcy of the above estate, to review the order of Joseph J. Rifkind, Referee in Bankruptcy, dated August 8, 1958. The Trustee in Bankruptcy appeared by and through his attorneys, Quittner, Stutman, & Treister, by George M. Treister. Claimant, Director of Internal Revenue, appeared by and through his attorney, Laughlin E. Waters, Esq., United States Attorney, Edward R. McHale, Esq., and Jack Roberts, all by Jack Roberts. The Court having considered the record including the certificate of the Referee in Bankruptcy, and having considered the memoranda filed

herein and the arguments of counsel, now, therefore, does hereby make its Findings of Fact, Conclusions of Law and Order as follows: [46]

Findings of Fact

I.

The Involuntary Petition in Bankruptcy instituting the above proceedings was filed November 14, 1955, and an order of adjudication in bankruptcy was duly entered thereafter. Irving I. Bass is the duly elected, qualified and acting Trustee in Bankruptcy.

II.

The Director of Internal Revenue filed his claim for federal taxes owing by the bankrupt in these proceedings. Said claim was assigned number 139 on the docket of the Referee in Bankruptcy. Said claim included a claim for taxes supported by a tax lien, which said lien arose and was recorded prior to the date of bankruptcy, and further included federal taxes unsupported by any lien.

III.

The Trustee in Bankruptcy has heretofore paid to the Director of Internal Revenue the entire principal amount owing on the tax lien claim and the tax claim not secured by lien, and has further paid all interest accruing upon the said taxes and tax lien to the date of bankruptcy, to wit, November 14, 1955. The Trustee objected to claim number 139 insofar as said claim included interest accruing

upon the tax lien portion thereof from and after the date of bankruptcy. The amount of the interest accruing upon the tax lien portion of claim number 139 subsequent to the date of bankruptcy is the sum of $2,453.64.

Upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

Conclusions of Law

I.

Interest ceases to accrue as of the date of bankruptcy upon all tax claims, including both those supported by tax liens [47] arising and recorded prior to bankruptcy and tax claims not supported by liens.

II.

Claim number 139 should be disallowed to the extent that said claim includes interest accruing on taxes subsequent to November 14, 1955. The amount of post-bankruptcy interest accruing on the tax lien portion of claim number 139, to wit, the sum of $2,453.64, should, accordingly, be disallowed.

III.

The order of Joseph J. Rifkind, Referee in Bankruptcy, dated August 8, 1958, allowing claim number 139, should be reversed, to the extent that said order allows post-bankruptcy interest in the sum of $2,453.64 on the tax lien portion of claim number 139.

Upon the foregoing Findings of Fact and Conclusions of Law, this Court hereby makes its order, as follows:

Order

Ordered, that the order of Joseph J. Rifkind, Referee in Bankruptcy, dated August 8, 1958, be, and the same hereby is, reversed to the extent that said order allows post-bankruptcy interest in the sum of $2,453.64 upon the tax lien portion of claim number 139; and it is further

Ordered, that the proceedings are hereby remanded to the said Referee in Bankruptcy with directions to disallow claim number 139 to the extent that said claim includes post-bankruptcy interest in the sum of $2,453.64 upon the tax lien portion of the said claim number 139.

/s/ LEON R. YANKWICH,
Chief Judge, United States
District Court.

Affidavit of service by mail attached.

Lodged October 6, 1958.

[Endorsed]: Filed and entered October 13, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Irving I. Bass, Trustee in Bankruptcy, and his Attorneys, Quittner, Stutman & Treister, 639 South Spring Street, Los Angeles 14, California:

You, and Each of You, Are Hereby Notified that the United States of America, a claimant in the above-entitled bankruptcy proceedings, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Findings of Fact, Conclusions of Law and Order on Petition to Review Referee's Order of August 8, 1958, Re Claim No. 139, entered in this action on October 13, 1958, reversing a decision of the Referee in Bankruptcy, which had allowed interest in the sum of $2,453.64 subsequent to bankruptcy on a lien of the United States, which had arisen prior to bankruptcy. [50]

Dated: November 12, 1958.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Asst. United States Attorney,
Chief, Tax Division;

JACK ROBERTS,
Attorney,
Internal Revenue Service;

/s/ EDWARD R. McHALE,
Attorneys for
United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed November 12, 1958. [51]

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 57, inclusive, containing the original:

Claim of United States for Taxes, filed 1/26/56, with letter attached from U. S. Treasury Department.

Objections to Claims and notice of hearing of objections re claim 139, filed 6/18/58.

Stipulation of Facts, filed 8/8/58.

Letter dated 7/14/58 addressed to Referee Rifkind, from George M. Treister.

Memorandum Opinion of Referee re objection to claim No. 139 of Director of Internal Revenue filed 7/28/58.

Certificate of mailing re memorandum opinion, etc.

Findings of Fact, Conclusions of Law and Order on Trustee's objection to Claim of District Director of Internal Revenue, filed 8/8/58.

Petition to Review Order of Referee re objections to Claim No. 139.

Notice of Filing Certificate on Review from Referee's Order dated 8/8/58.

Certificate on Review from Referee's Order dated 8/8/58.

Opinion, filed 10/1/58 (Judge Yankwich).

Findings of Fact, Conclusions of Law and Order on Petition to Review Referee's Order of 8/8/58, re Claim No. 139, filed 10/13/58.

Notice of Appeal.

Motion for extension of time to docket cause on appeal and order.

Designation of contents of Record on Appeal.

B. Copy of "Docket Entries."

I further certify that my fee for preparing the foregoing record, amounting to $1.60 has not been paid by appellant.

Dated: February 2, 1959.

JOHN A. CHILDRESS,
Clerk;

[Seal] By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16348. United States Court of

Appeals for the Ninth Circuit. United States of America, Appellant, vs. Irving I. Bass, Trustee in Bankruptcy of the Estate of Leland Cameron, Bankruptcy, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed and Docketed: February 4, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16348

UNITED STATES OF AMERICA,
Appellant,

vs.

IRVING I. BASS, Trustee,
Appellee,

In the Matter of

LELAND CAMERON, a/k/a L. H. CAMERON, d/b/a ALLIED AIRCRAFT CO.,
Bankrupt.

STATEMENT OF POINTS UPON WHICH THE UNITED STATES INTENDS TO RELY UPON APPEAL

In accordance with Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit the United States hereby sets forth the following statement of points upon which it intends to rely upon appeal:

The District Court erred in holding that the United States is not entitled to postbankruptcy interest upon its tax claims secured by liens existing prior to bankruptcy.

Dated: February 5, 1959.

CHARLES K. RICE,
Assistant Attorney General,
Tax Division;

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant U. S. Attorney,

/s/ EDWARD R. McHALE,
Attorneys for Appellant,
United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed February 6, 1959.